

PUBLIC COMMUNICATION TO THE NAO OF MEXICO

Public Communication to the Mexican National Administrative Office under the North American Agreement on Labor Cooperation (NAALC) Concerning the Prohibition on Collective Bargaining Rights for Public Employees in the State of North Carolina, which Seriously Diminishes Labor Standards, including the Right to Freely Associate and to Organize and to Bargain Collectively, in Violation of the NAALC, Conventions of the International Labor Organization (ILO) and Principles of International Law Incorporated in Various International Instruments.

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- Alianza de Tranviarios de México
- Asociación Sindical de Trabajadores del Instituto de Vivienda
- Canadian Association of Labour Lawyers (Asociación de Abogados Canadienses)
- Canadian Auto Workers Union (Sindicato Canadiense de Trabajadores Automotrices)
- Canadian Labor Congress (Congreso Obrero Canadiense)
- Centrale des syndicats du Québec (CSQ) (Central Sindical de Québec)
- Canadian Union of Public Employees (CUPE) (Sindicato Canadiense de Empleados Públicos)
- Communications, Energy and Paperworkers Union of Canada (Sindicato Canadiense de Comunicaciones, Energía y Papel)
- Confédération des syndicats nationaux (CSN) (Confederación Nacional Sindical)
- Coordinadora Sindical Independiente
- Farm Labor Organizing Committee (FLOC), AFL-CIO Comité de Organizaciones Agrícolas
- Federación de Liberación Social
- Federación Estatal de Sindicatos Auténticos de Guanajuato (FESAG)
- Fédération des infirmières et infirmiers du Québec (FIIQ) (Federación de Enfermeras y Enfermeros de Québec)

- Fédération des travailleurs et travailleuses du Québec (FTQ) (Federación de Trabajadores y Trabajadoras de Québec)
- Federación Metropolitana de Trabajadores
- Frente Mecánico de Trabajadores y Empleados del Comercio en General, Oficinas Particulares, Bodegas y Tiendas Comerciales del D.F.
- International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) (Federación Internacional Química, Energética, Minera y Obreros en General)
- International Union, United Automobile, Aerospace and Agricultural Implement Workers of American (UAW) (Sindicato Internacional de Trabajadores Unidos Automotrices, Aeroespacial y Desarrollo Agrícola)
- Labor Council for Latin American Advancement (Consejo Laboral para el Desarrollo Latinoamericano)
- Public Service International (PSI) (Servicio Público Internacional)
- Sindicato de Trabajadores de Casas Comerciales, Oficinas y Expendios, Similares y Conexos del Distrito Federal
- Sindicato Democrático de Trabajadores de Pesca y Acuicultura de la SAGARPA
- Sindicato del Heroico Cuerpo de Bomberos del Distrito Federal
- Sindicato "Flores Magón" de Trabajadores de la Fábrica Hulera Industrial Leonesa, S.A. de C.V.
- Sindicato Industrial de Trabajadores Textiles y Similares "Belisario Domínguez".
- Sindicato de Trabajadores Académicos de la Universidad Autónoma Chapingo
- Sindicato de Trabajadores del Instituto Nacional de Capacitación del Sector Agropecuario
- Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares
- Sindicato Nacional de Trabajadores de la Educación para Adultos (SNTEA)
- Sindicato Nacional de Trabajadores de Elevadores Otis
- Sindicato Nacional de Trabajadores de la Industria de la Costura, Confección, Vestido, Similares y Conexos "Diecinueve de Septiembre"
- Sindicato Nacional de Trabajadores de la Industria del Hierro y el Acero, Productos Derivados, Similares y Conexos de la República Mexicana
- Sindicato de Trabajadores del Transporte en General, Similares y Conexos de la República Mexicana
- Sindicato de Trabajadores de Metlife
- Syndicat de la fonction publique du Québec (SFPQ) (Sindicato de Servidores Públicos de Québec)
- Sindicato Nacional de Empleados y Trabajadores de Nacional Monte de Piedad
- Unión Nacional de Trabajadores (UNT)
- Sindicato Nacional de Trabajadores de Azucarales y Derivados "Chema Martínez"
- Sindicato Nacional de Trabajadores de General Tire de México, S.A. de C.V.
- Sindicato Nacional de Trabajadores de Impulsora Mexicana de Telecomunicaciones
- Sindicato Nacional de Trabajadores del Instituto Nacional de Estadística, Geografía e Informática
- Sindicato Nacional de Trabajadores de Telecomm Telégrafos

- Sindicato Nacional Único y Democrático de los Trabajadores del Banco Nacional de Comercio Exterior
- Sindicato de Trabajadores de la Universidad Iberoamericana
- Sindicato Único de Trabajadores de Calzado Sandak (Calpulalpan)
- Sindicato Único de Trabajadores del Gobierno del Distrito Federal
- Sindicato Único de Trabajadores de la Universidad Autónoma de la Ciudad de México
- Sindicato Único Nacional de Trabajadores de Nacional Financiera
- UNITE HERE
- United Electrical, Radio & Machine Workers of America (UE) (Unión de Trabajadores de la Electricidad, la Radio y la Maquinaria de América)
- United Food and Commercial Workers (UFCW) (Sindicato de Trabajadores de Alimentos y Comercio)
- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO/CLC (USW) (Sindicato del Acero, Papel, Silvicultura, Caucho, Fabricación, Energía, Alianza Industrial y trabajadores de Servicio Internacional)

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I. Introduction

The United States does not include the protection of collective labor rights of state and municipal workers in either its national constitution or its federal labor law, generally leaving to the states the regulation of collective bargaining. The result is that state laws establish a wide variety of systems, ranging from broad protections for such workers in the historically industrialized and unionized northern part of the country and more limited protections in the South. While the levels of regulation may vary from state to state, North Carolina is virtually alone in prohibiting public sector workers from entering into collective bargaining agreements.

North Carolina General Statute §95-98 declares such public sector collective bargaining agreements *“to be against the public policy of the State, illegal, unlawful, void*

and of no effect.” This statute directly violates principles of international law guaranteeing the right to freely associate and bargain collectively, as embodied in the Obligations contained in Part Two and the Labor Principles set forth in Annex I of the North American Agreement on Labor Cooperation (NAALC). Indeed, this statute contradicts the fundamental labor rights protected in the International Labor Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work; the specific recommendations issued by the ILO to the US government regarding the right to freedom of association and to bargain collectively; and the recommendations issued by the Mexican and Canadian NAOs regarding complaints for violations of labor principles under NAALC Annex I. Furthermore, this legislation blatantly undermines the North American Free Trade Agreement (NAFTA) parties’ commitment to protect, extend and enforce workers’ basic rights by providing higher labor standards through improvements in each country’s labor legislation.

In its preamble, NAFTA provides “The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to: CREATE new employment opportunities and improve working conditions and living standards in their respective territories;.... and PROTECT, enhance and enforce basic workers' rights (Emphasis added).”

! “Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.” North Carolina General Statute §95-98.

Rather than include labor provisions within NAFTA itself, the three NAFTA countries chose to create a new structure through what became known as the NAALC. In doing so, the parties set forth the following objectives:²

- (a) improve working conditions and living standards in each Party's territory;*
- (b) promote, to the maximum extent possible, the labor principles set out in Annex I;*
- (c) encourage cooperation to promote innovation and rising levels of productivity and quality;*
- (d) encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory;*
- (e) pursue cooperative labor-related activities on the basis of mutual benefit;*
- (f) promote compliance with, and effective enforcement by each Party of, its labor law; and*
- (g) foster transparency in the administration of labor law.*

These are further elucidated in Part Two of the NAALC which deals with Obligations, and the Labor Principles which appear in Annex I. The first two principles recognized in Annex I are: 1) the freedom of association and protection of the right to organize and 2) the right to bargain collectively.

The United States government is fully aware that it has failed to protect North Carolina public sector workers' right to freely associate and bargain collectively, in violation of the NAALC, as North Carolina General Statute §95-98 has previously been denounced by the ILO Committee on Freedom of Association in Case 1557.³

In spite of this, the US government has refused to address the ILO recommendations and has failed to take any steps to ensure that the state of North Carolina integrate the labor principles protected under the NAALC into its legislation. Instead, it has repeatedly stated that

² . Article 1, Objectives.

³ . ILO, Committee on Freedom of Association, Report 284, Case 1557 paragraph 813, and Report 291, Case 1557, paragraph 285.

its federal political system prevents the federal government from intervening in the states' internal legislation. The US government has used this argument to avoid compliance with its international commitments as a party to NAFTA and the NAALC, the United Nations (UN), the Organization of American States (OAS) and the ILO. However, countries' obligations under treaties would be meaningless if their domestic laws were permitted to contradict such agreements. The United States' failure to enforce its obligations under the NAALC throughout its entire territory nullifies the goals of NAALC by preventing the objectives established by the NAFTA signatories from being achieved. These objectives include creating a broader and safer market for goods and services produced in the Parties' territories, encouraging greater corporate competitiveness in global markets, and creating new job opportunities, improving working and living conditions in each NAFTA country. Moreover, the United States Supreme Court has held that the US government cannot hide behind a claim of federalism to avoid its international obligations. Finally, it is worth noting that when signing the NAALC, none of

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the three countries established any objection to promoting the labor principles set forth in Annex 1 throughout its territory.

North Carolina General Statute §95-98 not only violates workers' rights under the NAALC, but also infringes upon other international laws protecting fundamental human rights. The Preamble of the NAALC highlights the commitment of the governments of Canada, Mexico and the United States to "protect, enhance and enforce basic workers' rights" through the application of the labor principles set forth in Annex 1. The basic workers' rights the

⁴ *Sanchez-Llamas v. Oregon*, 126 S.Ct. 2669, 2680 (2006), citing *Hauenstein v. Lynham*, 100 U.S. 483 (1880).

NAALC signatories resolved to protect arose out of, and must be interpreted in light of, the larger body of international law. Basic workers' rights are laid out in the Universal Declaration of Human Rights (articles 20, 23), the International Covenant on Economic, Social and Cultural Rights (articles 7, 8), the International Covenant on Civil and Political Rights (article 22), the American Convention on Human Rights (articles 16, 29), the Inter-American Democratic Charter (article 10), and the ILO Declaration on Fundamental Principles and Rights at Work. These human rights covenants are considered the minimum floor for labor

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rights. It is quite clear that NCGS §95-98's prohibition on collective bargaining violates these most fundamental workers' human rights. By permitting North Carolina to prohibit public sector collective bargaining, the United States has violated its duty to "protect, enhance and enforce basic workers' rights" under the NAALC.

The United States government's failure to prevent North Carolina from violating public sector workers' basic rights to freely associate and bargain collectively has dramatically impacted the lives of public sector workers and has translated into miserable working conditions for many such workers in North Carolina. Therefore, the undersigned labor organization requests that the Mexican NAO immediately review this petition and enter into consultations with the Government of the United States to focus attention on the blatant violations of workers' rights to collectively bargain in North Carolina, and as such, a failure by the United States to uphold its obligations arising from its participation in the NAALC and membership in the ILO to protect the fundamental labor rights of workers.

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See Appendix A.

II. Statement of Jurisdiction

A. NAO Jurisdiction

NAO jurisdiction to review this submission is authorized by Article 16(3) of the NAALC, which grants each NAO power to review public communications on labor law matters arising in the territory of another party. The violations alleged in this complaint directly infringe upon the fundamental rights of freedom of association and collective bargaining.

As a party to NAALC, a Member state of the ILO and a signatory of the Inter-American Democratic Charter, the United States has an obligation to enforce labor standards within its borders. The United States government has failed to adequately protect workers' rights in North Carolina as their participation in the NAALC and Inter-American Democratic Charter and membership in the ILO require.

No confidential material is contained in this complaint.

B. Ministerial Review Jurisdiction

Article 22 of the NAALC empowers the Ministry of Labor and Social Welfare of Mexico to request consultation with the Department of Labor of the United States regarding the matters within the scope of the NAALC. The issues raised in this submission are within the scope of the NAALC.

C. Further Action

Should these matters not be sufficiently satisfied through ministerial consultations, the undersigned labor organization respectfully requests the establishment of an Evaluation Committee of Experts (ECE) under Article 23, and if necessary, the convening of an arbitration panel and potential imposition of sanctions under Article 29 et. seq. because of the persistent pattern of failure by the United States to effectively enforce its occupational safety and health standards in North Carolina.

III. Violations of the NAALC

First Argument: NCGS §95-98 Results in Conditions of Employment that Violate the NAALC's Guiding Labor Principles Outlined in Annex 1.

North Carolina municipal and state employees suffer through harsh working conditions that violate a number of the NAALC's guiding labor principles. NCGS §95-98 prohibits workers from improving these oppressive working conditions through the traditional means of collective bargaining. As such, public sector workers in North Carolina are forced to toil in unsafe workplaces and are subjected to discriminatory treatment.

The International Commission on Labor Rights (ICLR) recently examined conditions
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faced by public sector workers in North Carolina. It noted that these workers were generally low income, earning less than \$30,000 a year, and that "a majority of these workers are people of color and are predominantly women." The Commission found "significant violations of

⁶ ICLR is an independent commission composed of labor and human rights experts. The Commission convened a team from within its network consisting of individuals with expertise in international law and the standards related to, and comparative approaches towards, public sector unionism and collective bargaining rights. The ICLR delegation conducted an on-site assessment from October 31 to November 4, 2005. The report, which includes their findings and recommendations, is being submitted with this submission.

internationally recognized labor standards in the public sector in North Carolina, which were strongly correlated to the absence of collective bargaining rights.”

Among its specific findings were:

- Race and gender-based discrimination in hiring, promotion, pay, the exercise of discipline, and termination;⁷
- Systematic breaches of occupational health and safety norms; and
- Arbitrary policies with respect to performance management.⁸

Public sector workers in North Carolina report extremely low wages and benefits, unreasonable and unsafe hours of work, extreme under-staffing, unreasonable forced overtime, favoritism and disrespectful treatment from superiors, and serious health and safety violations in their workplaces, amongst other complaints. All of these problems are compounded by inconsistent grievance procedures devoid of any notion of due process.

Perhaps the most disturbing result of North Carolina’s long-term ban on collective bargaining in the public sector is the unmistakable prevalence of widespread race and sex discrimination. The American South’s shameful history, from slavery through Jim Crow

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segregation, is well-documented. The vestiges of North Carolina’s racist past are clearly evident in the state’s public sector workplaces. Employees complain of unequal treatment for racial minorities

⁷ ICLR Report at p. 20.

⁸ ICLR Report at p. 26.

⁹ . Low wage public sector workers in North Carolina have historically been predominantly African American, and generally have been women. However, North Carolina is experiencing the largest percentage increase of Latino population in the entire U.S., and while largely still found in the private sector, such workers are entering the public sector in increasing numbers. <http://www.census.gov/population/cen2000/atlas/hislat.pdf>

and women in hiring, promotions, discharges and wage rates. The state's own comprehensive reports determined that these complaints are accurate.¹⁰

For example, while statistics are not yet available for Latino workers, they clearly show that African Americans are disproportionately under-represented in the state government workforce, especially in management and professional positions. Not surprisingly, African Americans and women are over-represented in the lowest-paying jobs and have largely been unable to break through the state's "glass ceiling".¹¹

Public sector employees also report widespread racial and sexual harassment. One particularly odious example occurred in a North Carolina Department of Transportation maintenance shop where African American workers were subjected to a coworker's hanging of a noose—a symbol of the racist lynchings of African Americans that were common in the U.S. South not long ago. Shockingly, the noose remained at their work site for over a month.¹²

All of these complaints could be addressed through the collective bargaining process. However, the prohibition of collective bargaining agreements in North Carolina has prevented public sector workers from experiencing the basic dignity associated with having a say in establishing one's conditions of work, as well as the increased authority derived from speaking with a collective voice.

¹⁰ *Special Emphasis Project: African American Males and Employment in North Carolina State Government*, Project Report, N.C. Office of State Personnel (June 2002); *Special Emphasis Project: Female Employment in North Carolina State Government*, Project Report, N.C. Office of State Personnel (November 2004).

¹¹ *Special Emphasis Project: African American Males and Employment in North Carolina State Government*, at 2; *Special Emphasis Project: Female Employment in North Carolina State Government*, at 3-4.

¹² Because of the egregious nature of the incident, a Federal Highway Administration investigation found that the Department of Transportation failed to meet basic requirements of federal anti-discrimination regulations. Later, a federal jury determined that the Department of Transportation unlawfully permitted a racially hostile work environment. See <http://www.phillyburbs.com/pb-dyn/news/1-05182005-491178.html>.

In essence, NCGS §95-98 acts as a state-mandated impediment to eliminating race and sex discrimination. Collective bargaining would provide public sector employees with numerous tools to counter the continuing racism and sexism in their workplaces. From establishing truly objective criteria for employment decisions to developing workable anti-harassment mechanisms, the collective bargaining process would offer public sector workers a voice in changing the current system to eradicate the widespread institutional racism and sexism.

North Carolina public sector workers' onerous working conditions violate the following Annex 1 Labor Principles:

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

9. Prevention of occupational injuries and illnesses

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

10 Compensation in cases of occupational injuries and illnesses

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

The testimony provided to the ICLR revealed a persistent pattern of race and sex discrimination and unsafe working conditions that neither the United States nor North Carolina has adequately rectified. Many of the workers who provided testimony to the ICLR believe that they faced the risk of dismissal for their attempts to organize a union. Nonetheless, some of these workers continue to organize despite the prohibition on obtaining a collective bargaining agreement.

The seriousness and number of violations, the risks faced by the complaining workers and those who lack basic protections in the workplace, and the workers' inability to rectify their oppressive working conditions through the collective bargaining process make it imperative that the NAO provide a prompt response to this submission.

Second Argument: NCGS §95-98 Violates the Obligations of the United States under Article 2 of the NAALC.

This submission raises the somewhat unique case where the southern State of North Carolina has gone even further. Instead of either leaving the parties free to act or establishing a regulatory system pursuant to which the rights of freedom of association and collective bargaining may be exercised, North Carolina has chosen to totally prohibit state or municipal workers from entering into such agreements. To do so violates both the language and intent of NAFTA and the NAALC. The first two principles recognized in Annex 1 are: 1) the freedom of association and protection of the right to organize and 2) the right to bargain collectively.

Both the introductory paragraph of Annex 1 and Article 2 reflect the decision of the parties not to attempt to establish continental standards as originally proposed by the Clinton

Administration, but to require each party to establish and enforce its own domestic standards. However, this deference was subject to both substantive and procedural requirements. The substantive qualification is contained in the mandate in Article 2 that “*each Party shall ensure that its labor laws and regulations provide for high labor standards... and shall continue to strive to improve those standards in that light.*”

This case, therefore, directly raises the question of whether a party to the NAALC may permit the direct contravention of the most fundamental labor principles agreed upon by the three parties and fail to take any action to remedy such a breach within its territory without violating its obligations under Article 2 of the NAALC to provide for high labor standards.

In virtually all of the Joint Declarations of the Ministerial Consultations to which it has been a Party, the United States government has reaffirmed its commitment to complying with the eleven labor principles of the NAALC. These cases involved freedom of association and protection of the right to organize, the right to bargain collectively, elimination of job discrimination, prevention of job illnesses and injuries, and minimum working conditions.¹³

Nonetheless, public sector workers in North Carolina are wholly precluded from entering into collective bargaining agreements. While the upper limits of what constitute “high labor standards” has remained undefined, in this case, the United States government has failed to ensure the most basic and fundamental labor and human rights for a large segment of the workforce in North Carolina. By any definition, public sector workers in North Carolina work within a legal

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Ministerial Consultations arising from Public Communications USA 9702 and USA 9703; MEX 9801, MEX 9802 and MEX 9803; USA 9901, 2000-01 and MEX 9804.

framework that does not provide “high labor standards.” If the concept of “high labor standards” does not include the most basic rights to organize and bargain collectively, it is meaningless.

The NAALC was not established in vacuum; it is part of a larger body of international law. Whatever was intended by the NAALC’s concept of “high labor standards”, at a minimum it must encompass the basic human rights mandated by other international covenants. Under Article 22 of the International Covenant on Civil and Political Rights , workers’ freedom of association is

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guaranteed. States may only limit workers’ right to associate in very limited circumstances. Clearly, NCGS §95-98's sweeping prohibition of collective bargaining violates Article 22 by eliminating public sector workers’ impetus to associate.

Likewise, under Article 10 of the Inter-American Democratic Charter , the ILO’s core labor

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standards, including the right to collectively bargain and the right to freely associate must be promoted and enhanced in a democratic society. The Inter-American Commission on Human Rights has established that domestic laws must adhere to principles recognized by international law as inherent to freedom of association; “that is: the right of every individual to establish labor unions for the purpose of promoting and protecting his economic and social rights; the right of labor unions to operate without impediments and without other limitations than those prescribed by law and necessary in a democratic society; the right to collective bargaining of employment contracts and the right of workers to strike in defense of their occupational interests.”¹⁶

¹⁴ The United States has ratified this covenant and would therefore be in no position to argue against its relevance.

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¹⁶ Cfr. IACHR, Country Report, Chile, 1985, para. 120.

The Commission adds that the right to freedom of association and to organize in unions is instrumental to the exercise of social rights and is a crucial factor in determining the quality of any democracy. As such, “high labor standards” clearly must include the basic right to collectively¹⁷ bargain.

The only NAO report which has interpreted Article 2 was the Review by the Canadian NAO of the Echlin submission, a case which challenged the failure to conduct elections by secret ballot. In holding that Mexican tribunals should interpret their own laws in light of Article 2, the NAO noted that if alternatives to secret ballots were used, “the onus is on the JFCA to show that they are equally effective in protecting the accuracy and integrity of the recuento and that they meet the obligations stemming from Article 2 of the NAALC. The objective here is to ensure the true wishes of the workers are ascertained as required by the principle of freedom of association.”¹⁸

Moreover, even if the Canadian NAO were in error in requiring the Mexican tribunals to interpret their laws in accordance with a high standard required by Article 2 (in that case accuracy and integrity comparable to a secret ballot election), and Article 2 cannot be interpreted to imply some substantive minimum standard, Article 2 goes on to require the parties “*to continually strive to improve standards which are not in accordance with the NAALC principles.*”

Neither the United States nor North Carolina have taken any steps to require the repeal of General Statute §95-98. By failing to take any steps to ensure North Carolina public sector workers’ right to bargain collectively, the United States has violated Article 2 of the NAALC.

¹⁷ Recently, the IACHR 2002 Annual Report referred to the situation in Venezuela stating that “...the right to elect and to be elected and to organize in trade unions are rights recognized in the American Convention, and in the Inter-American Democratic Charter. The right to form and join trade unions, without undue interference from the state, is, in the view of the IACHR, an important element in any democracy” (IACHR, Annual Report 2002, Venezuela, para. 49).

¹⁸ Canadian NAO, “Review of Public Communication CAN 98-1 (Part I),” p. 37.

Third Argument: NCGS §95-98 Violates the ILO's Core Labor Standards, Which Are Binding on the United States. As Such, the United States Is Violating Its Obligations Under the NAALC.

Under Part II, Article 3 of the NAALC, parties are required to “*promote compliance with and effectively enforce [their] labor laws...*” As a member of the ILO and a signatory to the Inter-American Democratic Charter, the United States is required to protect workers’ basic

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rights—embodied in Conventions 87 and 98—to freely associate and to enter into collective bargaining agreements regardless of whether it has ratified Conventions 87 and 98.²⁰

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According to Article 10 of the Inter-American Democratic Charter:

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

Although the United States has not ratified Conventions 87, 98 or 151, it is obligated “to respect, to promote and to realize, in good faith and in accordance with the Constitution” the principles relating to the fundamental rights of freedom of association and the right to collective bargaining simply from its membership in the ILO. See ILO Declaration on Fundamental Principles and Rights at Work, 86 Session, Geneva, June 1998.

See also Committee on Freedom of Association (Procedure in respect of the Committee on Freedom of Association and the social partners: Function of the ILO and mandate of the Committee on Freedom of Association), 1996 Digest, para. 10 (“When a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association.”). Therefore, as a member of the ILO, the United States is clearly subject to Conventions 87 and 98 whether or not it ratified those core conventions.

The United States is also obligated to respect workers’ right to freely associate under customary international law. Freedom of association is recognized in a wide range of human rights instruments, including: the Universal Declaration on Human Rights; the instruments of the ILO; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the American Convention On Human Rights; and the Inter-American Democratic Charter. At least one US domestic court has held that the rights articulated in ILO Conventions 87 and 98 have attained the status of customary international law, stating: “Although this court recognizes that the United States has not ratified ILO Conventions 87 and 98, the ratification of these conventions is not necessary to make the rights to associate and organize norms of customary international law.” *Estate of Rodriguez v. Drummond Corp.*, 256 F.Supp. 2d. 1250, 1263 (N.D. Ala 2003). Moreover, the CFA has stated that ILO members, by virtue of their membership, are “bound to respect a certain number of general rules which have been established for the common good. . . . Among these principles, freedom of association has become a customary rule above the Conventions.” ILO Committee on Freedom of Association, Fact-Finding and Conciliation Commission Report: Chile, 1975, para. 466.

In 1998 the Mexican NAO in Public Communication Mex 98-02 stated that the United States was not

subject to ILO Conventions 87 and 98; However, the Declaration of Fundamental Principles and Rights at Work

General Statute §95-9 8 contravenes ILO Conventions 98 (Right to Organise and Bargain Collectively) and Convention 151 (Right to Organise and Procedures for Determining Conditions of Employment in the Public Service), and consequently infringes upon the right to organize freely as embodied in ILO Convention 87 (Freedom of Association and Protection of the Right to Organise) by making the intended benefits of worker organization unattainable.²¹

General Statute §95-98's prohibition of collective bargaining violates Articles 3 through 7 of the NAALC, which require the United States to ensure enforcement of its labor law and detail a variety of requirements related to government enforcement, private right of action, and procedural guarantees. Since public sector workers in North Carolina are banned from collective bargaining, obviously no system containing any of the elements required by Articles 3, 4 and 5 can exist with

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respect to collective bargaining. Since workers, by law, are precluded from collective bargaining, they are similarly divested of a private action, the recourse to enforcement of rights, as well as procedural protections. Articles 6 and 7, mandating publication and public awareness are also violated, as no law protecting collective bargaining for public sector workers in North Carolina yet exists. As such, by sanctioning General Statute § 95-98, the United States is necessarily violating its obligations under Articles 3 through 7 of the NAALC.

of the ILO was issued after the submission of that case. Therefore, this analysis should be reconsidered first in light of the interpretation of the U.S. court in *Drummond* and second, because membership in the ILO requires application of the core conventions.

21 . As noted above, the parties to NAFTA laid out their guiding principles in Annex 1 of the NAALC. The first two guiding principles contained in Annex 1 are quite closely related to ILO Conventions 87 and 98, two of the ILO's core standards.

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NCGS §95-98 Violates Principles of International Law Embodied in the Annex 1 Labor Principles and ILO Conventions 98, 87 and 151.

a) Conventions 98 and 151²³

ILO Convention 98, Article 4 requires states to take measures “*to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations*” with collective agreements being the means by which terms and conditions should be settled.

Convention 98 reaffirms that the right to collectively bargain is a universally recognized
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fundamental principle of international law. Its status as a core convention further reinforces the imperative for enforcement of the right across all sectors of the workforce other than those specifically exempted.

ILO Convention 151 defines the term “*public employee*” and establishes guarantees consistent with those provided in Conventions 87 and 98 to be applied to “*public employees*”. Member states may limit the protections provided only to “*high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature*” or to members of the armed forces and the police.

Convention 151 guarantees to public employees that: “*Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public*

23 . The ILO’s Freedom of Association Committee has confirmed that the purpose of ILO Convention 151 is to supplement Convention 98. *International Labor Office*, p.187, paraphrasing Digest of 1985, para. 209.

24 . Convention No. 98, and in particular Article 4 thereof concerning the encouragement and promotion of collective bargaining, applies both to the private sector and to nationalized undertakings and public bodies. *See the Digest of 1985, para. 597.*

authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters."²⁵

In contrast to encouragement and promotion, North Carolina's statutory prohibition of public sector collective bargaining wholly precludes any such "negotiation of terms and conditions of employment." Moreover, the prohibition applies to all employees in the public sector, thus going beyond the Convention's allowable exceptions provided in Article 1.

The ILO's Committee on Freedom of Association has repeatedly interpreted conventions 98 and 151 as proscriptions against government interference with the right to collectively bargain.²⁶ Article 4 provides especially strong evidence that the NAALC substantively requires signatories to permit collective bargaining. Under Article 4, Section 2, "[e]ach Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under... collective

^{25.} ILO C151, *Labor Relations (Public Service) Convention*, 1978, Article 7.

^{26.} In response to a Complaint filed against the government of Denmark for unilaterally extending collective bargaining agreements, the CFA commented that "public authorities should refrain from any interference which would restrict or impede the lawful exercise by trade unions of their right [to collectively bargain], which the Committee regards as an essential element in freedom of association...." ILO Governing Body, 243 Report of the

Committee on Freedom of Association, Case No. 1338 (Denmark), para. 245 (1986).

In response to regulations adopted by the Costa Rican government that restricted wage increases for public sector workers agreed to through collective bargaining, the CFA cautioned the government that collectively bargained conditions of employment, including wages, "may be restricted with respect to wage negotiations only under certain conditions... as an exceptional measure and only to the extent necessary, without exceeding a reasonable period." ILO Governing Body, 240 Report of the Committee on Freedom of Association, Case No.

1304 (Costa Rica), para. 102(b) (1984).

In 1986, the CFA examined a complaint against the government of Bangladesh for the declaration of martial law that, among other things, denied public sector workers the right to bargain collectively. Citing an earlier observation of the Committee of Experts, the CFA held that "the right to negotiate wages and conditions of employment freely with [employers] is a fundamental aspect of freedom of association" that can only be restricted as "an exceptional measure" and only to the extent required, for a limited period of time, and only when "accompanied by adequate safeguards to protect the living standards of workers." ILO Governing Body, 241st Report of the Committee on Freedom of Association, Case No. 1326 (Bangladesh), para. 819 (1985).

In yet another reference to legislation that violated principles of the fundamental right to collective bargaining, the CFA declared that legislation that effectively excluded the subjects of wages, working hours, leave and conditions of work from the collective bargaining process "is not in harmony with Article 4 of Convention No. 98." Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body, 4 Edition (1996), para. 811.

agreements, can be enforced.” Clearly, the United States has not fulfilled its Article 4 obligation to provide procedures to enforce collective agreements as NCGS §95-98 wholly prohibits such agreements for public sector workers. A procedural right can exist in theory, but it is useless without the underlying substantive law.

By fully prohibiting North Carolina public sector workers from entering into collective bargaining agreements, the United States has undeniably violated its obligations under conventions 98 and 151 according to the Committee on Freedom of Association’s interpretations of the conventions.

b) Convention 87²⁷

When workers lose the right to collectively negotiate and form agreements regarding terms of employment with their employers, they are denied the intended benefit of employee unions. Hence, their right to freedom of association becomes a hollow right. Just as the right to freedom of speech is devoid of substance without the means to communicate the content of the speech to elected leaders, the right to freedom of association loses its meaning when workers are without the means to use their collective strength toward the intended benefit of their association—a collectively bargained agreement.

The undeniable interdependence of the right of freedom of association and the right to engage in collective bargaining was recognized in the preliminary work for the adoption of Convention 87. The report from the 30 session of the International Labour Conference indicates

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²⁷ The standards contained in Convention No. 87 apply to all workers "without distinction whatsoever", and are therefore applicable to employees of the State. It was indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defense of their interests. *See* the Digest of 1985, 213.

that “one of the main objects of the guarantee of freedom of association” is to foster favorable conditions for “freely concluded collective agreements” to emerge.²⁸

Likewise, when Human Rights Watch assessed the situation of workers’ rights in the United States, it recognized that effective protection of the right to freedom of association was impossible when collective bargaining is prohibited. In its report, *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards*, Human Rights Watch made note that public sector workers generally enjoyed protection against dismissal for associational activities.²⁹

The report stressed, however, that “the problem for public workers in states where collective bargaining is prohibited is ... the futility of an effort to organize.” While public sector workers in North Carolina have technically been free to join labor organizations since 1969,³⁰ the prohibition of collective bargaining agreements has largely undermined workers’ main objective in exercising their freedom to associate in the workplace—collective bargaining.³¹

As the 30th session of the International Labour Conference and Human Rights Watch have recognized, the right to bargain collectively is unmistakably tied to any meaningful right of association. As such, the North Carolina prohibition of collective bargaining violates workers’ rights under Convention 87.

28. Freedom of Association and Industrial Relations, Report VII, International Labour Conference, 30th Session, Geneva, 1947, at 52.

29. Lance Compa, *Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards*, p. 188.

30. *Id.*

31. *Atkins*, 296 F.Supp. at 1075.

The United States Has Refused to Exercise Its Authority Over the States to Ensure that North Carolina Law Comports to the Core Labor Standards.

In Case No. 1557 before the ILO's Committee on Freedom of Association (CFA), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and Public Services International (PSI) submitted a joint complaint that broadly challenged the United States government's failure to protect public sector workers' right to freely associate and bargain collectively. The complaint specifically cited NCGS §95-98 as an example of a statute that violated Convention 98 on its face. The CFA ultimately recommended that the United States government

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take action to *“draw the attention of the authorities concerned, and in particular in those jurisdictions where public servants are totally or substantially deprived of collective bargaining rights, to the principle that all public service workers other than those engaged in the administration of the state should enjoy such rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service.”* As such, the United States government has been

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undeniably put on notice of NCGS §95-98's unconscionable prohibition of collective bargaining and has taken no action for well over a decade.

Under the U.S. Constitution, the United States Congress clearly has the authority to regulate the relationship between states as employers, and their employees. However, to date, Congress

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³² See Complaint against the US government submitted by AFL-CIO and PSI, Case No 1557.

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³³ See ILO Committee on Freedom of Association, "Complaints Against the Government of the United States of America Presented by the AFL-CIO and Public Services International (PSI)," Case No. 1557, 76 (Series B) ILO Official bulletin, No. 3 at 99, 110-11 (1993) (emphasis added).

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³⁴ The decision by the United States Supreme Court in *Garcia v. San Antonio Metro. Transit Authority*, overruling a contrary decision in *National League of Cities v. Usery*, established that the U.S. Congress has the constitutional authority to impose minimum wage and overtime protections for employees of the states. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 557 (1985). The ILO Committee on Freedom of Association (CFA) noted this in 1993, in Report 291, Case 1557, wherein it observed that *Garcia* "supports the notion that the

has failed to enact any law that would ensure that public sector workers in North Carolina can exercise their most basic human rights set forth in Conventions 87, 98 and 151. Like the United States Congress, the federal courts have rejected workers' pleas to strike down North Carolina General Statute §95-98. United States federal courts have failed to protect workers' rights and

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have upheld North Carolina General Statute §95-98.³⁶

By failing to take any legislative, regulatory, or judicial actions against North Carolina Statute §95-98, the United States is not merely acknowledging the state's right, as an employer, to reject proposals by employee unions for an agreement; it is stamping its approval of state laws which outlaw the very agreements that, as a member state of the ILO, it has an affirmative obligation to encourage. The United States government is hiding behind its federal system in an attempt to shirk its obligations that arise from membership in the ILO, in direct violation of

federal Government may intervene in matters concerning state and local government employees." The CFA concluded that except for "public servants engaged in the administration of the state," no employee, although employed by the government, may be denied the guarantees of Convention 98.

35. See *Atkins v. City of Charlotte*, 296 F.Supp. 1068 (W.D.N.C. 1969) and *Winston-Salem/Forsyth County Unit of North Carolina Ass'n of Educators v. Phillips*, 381 F.Supp. 644 (M.D.N.C. 1974).

36. In *Atkins v. City of Charlotte*, workers employed by the City of Charlotte, North Carolina challenged the constitutionality of §§ 95-97, 95-98 and 95-99. Section 95-97 prohibited government employees from becoming members of labor unions. Section 95-99 addressed the penalty for violation of the statutes. The District Court for the Western District of North Carolina declared that federal courts have authority to review state statutes addressing public employees' rights to unionize and engage in collective bargaining. The Court struck down §§ 95-97 and 95-99. However, the court upheld §95-98 reasoning that states are free to refuse to enter into collective bargaining agreements, and, by extension, they are entitled to statutorily forbid such agreements. *Atkins*, 296 F.Supp 1068.

In 1974, the U.S. District Court for the Middle District of North Carolina also considered a challenge to § 95-98 by a public sector worker. The case, *Winston-Salem/Forsyth County Unit of North Carolina Ass'n of Educators v. Phillips*, 381 F.Supp 644 (M.D.N.C. 1974), presented the issue of whether the prohibition against collective bargaining agreements constituted a violation of the rights of Freedom of Association guaranteed by the First Amendment to the United States Constitution. The court held that despite any detrimental effects the statute might have on workers' ability to associate, the government is under no constitutional obligation to talk to or contract with any organization. *Phillips*, 381 F.Supp. at 646.

In the *Atkins* and *Phillips* decisions, the United States government gave state governments free reign to ban collective bargaining agreements. As such, the United States is circumventing its obligation "to protect, enhance and enforce" the fundamental right to collective bargaining.

Supreme Court precedent.³⁷

IV. Conclusion

By permitting the State of North Carolina to prohibit public sector workers from entering into collective bargaining agreements, the government of the United States has failed to uphold its most basic obligations as a party to the NAALC and a member of the ILO. Petitioners therefor respectfully request that the U.S. NAO accept this submission and undertake the actions requested in Section V.

V. Action Requested

The Petitioners ask the U.S. NAO to immediately review this submission and organize an informative session in North Carolina in order to obtain a greater understanding and more information regarding the matters raised in this submission, as authorized by the implementing regulations published in the Diario Oficial de la Federacion on Friday, April 28, 1995.

If the NAO finds that the conduct of the United States is in violation of the NAALC, petitioners urge that

1. the Labor Secretaries of the United States and Mexico immediately enter into ministerial consultations;
2. the Mexican NAO request that the United States take appropriate action to:
 - a. ensure that the state of North Carolina immediately cease to enforce and take action to repeal NCGS §95-98 and to replace it with legislation that fully protects the

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Sanchez-Llamas v. Oregon, 126 S.Ct. 2669, 2680 (2006), citing *Hauenstein v. Lynham*, 100 U.S. 483

(1880).

rights of public sector workers in North Carolina to organize and bargain collectively and to fully exercise their rights of freedom of association;

- b. publish all the proposals for change to NCGS §95-98 and to ensure that all the stakeholders have a reasonable opportunity to submit comments, in accordance with Article 6(2) of the NAALC, before actual changes are made.
 - c. encourage the State of North Carolina and its sub-divisions to institute “meet and confer” measures that will at a minimum promote negotiation with workers, even if the outcomes are not enforceable, until adequate measures are in place to ensure full protection of workers’ rights to bargain collectively;
 - d. ensure that the state of North Carolina and its subdivisions take immediate action to cease their discriminatory employment practices, provide safe workplaces for their employees, and institute workable procedures for resolving disputes with their employees;
 - e. encourage the United States to act in accordance with its often stated principals by ratifying ILO Conventions protecting freedom of association and collective bargaining;³⁸
3. if, following ministerial consultations, the relief requested in Paragraph 2 is not satisfactorily obtained, the NAO Secretary recommend that the Secretary of Labor request that an

³⁸ The ICLR Report states at pp. 30 - 31: “As has been noted by a series of prominent international labor rights scholars, it is crucial that the United States ratify Conventions 87 and 98 of the ILO. Lance Compa, for example, states: ‘This would send a strong signal to workers, employers, labor law authorities, and to the international community that the United States is serious about holding itself to international human rights and labor rights standards as it presses for the inclusion of such standards in new global and regional trade arrangements.’” The ILO reports that 147 countries have ratified Convention 87 and 156 have ratified convention 98, out of a total of 178 countries. <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

Evaluation Committee of Experts (ECE) be established under Article 23 and potentially arbitration and sanctions under Article 27 et. seq. of the NAALC regarding all matters that may properly be considered.

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And:

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- Alianza de Tranviarios de México
- Asociación Sindical de Trabajadores del Instituto de Vivienda
- Canadian Association of Labour Lawyers (Asociación de Abogados Canadienses)
- Canadian Auto Workers Union (Sindicato Canadiense de Trabajadores Automotrices)
- Canadian Labor Congress (Congreso Obrero Canadiense)
- Centrale des syndicats du Québec (CSQ) (Central Sindical de Québec)
- Canadian Union of Public Employees (CUPE) (Sindicato Canadiense de Empleados Públicos)
- Communications, Energy and Paperworkers Union of Canada (Sindicato Canadiense de Comunicaciones, Energía y Papel)
- Confédération des syndicats nationaux (CSN) (Confederación Nacional Sindical)
- Coordinadora Sindical Independiente
- Farm Labor Organizing Committee (FLOC), AFL-CIO Comité de Organizaciones Agrícolas
- Federación de Liberación Social
- Federación Estatal de Sindicatos Auténticos de Guanajuato (FESAG)
- Fédération des infirmières et infirmiers du Québec (FIIQ) (Federación de Enfermeras y Enfermeros de Québec)
- Fédération des travailleurs et travailleuses du Québec (FTQ) (Federación de Trabajadores y Trabajadoras de Québec)
- Federación Metropolitana de Trabajadores
- Frente Mecánico de Trabajadores y Empleados del Comercio en General, Oficinas Particulares, Bodegas y Tiendas Comerciales del D.F.
- International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) (Federación Internacional Química, Energética, Minera y Obreros en General)
- International Union, United Automobile, Aerospace and Agricultural Implement Workers of American (UAW) (Sindicato Internacional de Trabajadores Unidos Automotrices, Aeroespacial y Desarrollo Agrícola)
- Labor Council for Latin American Advancement (Consejo Laboral para el Desarrollo Latinoamericano)
- Public Service International (PSI) (Servicio Público Internacional)
- Sindicato de Trabajadores de Casas Comerciales, Oficinas y Expendios, Similares y Conexos del Distrito Federal
- Sindicato Democrático de Trabajadores de Pesca y Acuicultura de la SAGARPA
- Sindicato del Heroico Cuerpo de Bomberos del Distrito Federal
- Sindicato "Flores Magón" de Trabajadores de la Fábrica Hulera Industrial Leonesa, S.A. de C.V.
- Sindicato Industrial de Trabajadores Textiles y Similares "Belisario Domínguez"
- Sindicato de Trabajadores Académicos de la Universidad Autónoma Chapingo
- Sindicato de Trabajadores del Instituto Nacional de Capacitación del Sector Agropecuario

- Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares
- Sindicato Nacional de Trabajadores de la Educación para Adultos (SNTEA)
- Sindicato Nacional de Trabajadores de Elevadores Otis
- Sindicato Nacional de Trabajadores de la Industria de la Costura, Confección, Vestido, Similares y Conexos “Diecinueve de Septiembre”
- Sindicato Nacional de Trabajadores de la Industria del Hierro y el Acero, Productos Derivados, Similares y Conexos de la República Mexicana
- Sindicato de Trabajadores del Transporte en General, Similares y Conexos de la República Mexicana
- Sindicato de Trabajadores de Metlife
- Syndicat de la fonction publique du Québec (SFPQ) (Sindicato de Servidores Públicos de Québec)
- Sindicato Nacional de Empleados y Trabajadores de Nacional Monte de Piedad
- Unión Nacional de Trabajadores (UNT)
- Sindicato Nacional de Trabajadores de Azucarales y Derivados “Chema Martínez”
- Sindicato Nacional de Trabajadores de General Tire de México, S.A. de C.V.
- Sindicato Nacional de Trabajadores de Impulsora Mexicana de Telecomunicaciones
- Sindicato Nacional de Trabajadores del Instituto Nacional de Estadística, Geografía e Informática
- Sindicato Nacional de Trabajadores de Telecomm Telégrafos
- Sindicato Nacional Único y Democrático de los Trabajadores del Banco Nacional de Comercio Exterior
- Sindicato de Trabajadores de la Universidad Iberoamericana
- Sindicato Único de Trabajadores de Calzado Sandak (Calpulalpan)
- Sindicato Único de Trabajadores del Gobierno del Distrito Federal
- Sindicato Único de Trabajadores de la Universidad Autónoma de la Ciudad de México
- Sindicato Único Nacional de Trabajadores de Nacional Financiera
- UNITE HERE
- United Electrical, Radio & Machine Workers of America (UE) (Unión de Trabajadores de la Electricidad, la Radio y la Maquinaria de América)
- United Food and Commercial Workers (UFCW) (Sindicato de Trabajadores de Alimentos y Comercio)
- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO/CLC (USW) (Sindicato del Acero, Papel, Silvicultura, Caucho, Fabricación, Energía, Alianza Industrial y trabajadores de Servicio Internacional)

APPENDIX A
Relevant International Law Provisions

Universal Declaration of Human Rights:

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.*
- (2) No one may be compelled to belong to an association.*

Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.*
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.*

International Covenant on Economic, Social and Cultural Rights:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:*
 - (I) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays*

Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
- (b) The right of trade unions to establish national federations or confederations and the right*

of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

International Covenant on Civil and Political Rights

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

American Convention On Human Rights:

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;*
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;*
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or*
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.*

Inter-American Democratic Charter:

Article 10

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

ILO Declaration on Fundamental Principles and Rights at Work:

The International Labour Conference

1. Recalls:

(a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including, by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

(a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

(b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions; and

(c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the Annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

REPORT OF REVIEW OF THE MEXICAN NAO SUBMISSION MEX 2006-1

I. Executive Summary

Under the terms of the North American Agreement on Labor Cooperation (NAALC), the governments of Mexico, the USA and Canada committed, among other objectives, to improve the work conditions and the level of living in their territories; to promote the maximum labor principles established; and to promote the enforcement and effective implementation of their corresponding labor legislation.

The NAALC contemplates the mechanism for public submissions so that every person could bring to the attention of the governments issues related with the effective application of the labor legislation which arise in the territory of any of the Parties. This report of review concerns Submission MEX 2006-1 received by the Mexican National Administration Office (NAO), as part of the International Affairs Unit of the Secretariat of Labor and Social Security.

The submission was presented on October 18, 2006 by Frente Auténtico del Trabajo (FAT), the *United Electrical Radio and Machine Workers of America* (UE), the Canadian Labor Congress, and Unión Nacional de Trabajadores (UNT), among 51 unions and non-governmental organizations (NGO) of the three countries.

The Mexican NAO admitted the submission for its review and requested consultations for cooperation to the American NAO, in keeping with section 21 of the NAALC. In April and August 2008 and May 2011, the petitioners submitted additional information in support of the initial submission.

The petitioners highlight the alleged violation of labor principles 1, 2, 6, 7, 8, 9 and 10 of the NAALC. They argue the prohibition that the workers of the public sector in North Carolina are faced with to negotiate labor collective agreements, under the *North Carolina General Statute 95-98* (NC GS 95-98), which states that "any labor agreement of the public sector is contrary to the public policy of the state, illegal, illicit, void and without any effect." According to the petitioners, this generates bad working conditions in what regards to salaries and workdays; occupational lesions and disease are not prevented; the possibility of receiving compensations for said lesions is denied; and some public workers are submitted to a discriminatory treatment.

In this regards, the American government is forced - in keeping with the NAALC - to guarantee that its labor laws and regulations contemplate high labor standards (Section 2); foster the enforcement of its labor legislation and its effective application through the appropriate governmental measures (section 3); guarantee the workers' right to justice to state their rights (sections 4 and 5); guarantee the right to publication and knowledge of the labor legislation (sections 6 and 7).

The review of the Mexican NAO was carried out based on the arguments submitted by the petitioners and by the American NAO, in keeping with the NAALC and the regulation of the Mexican NAO about public submissions. The review does not pretend to create supra-national mechanisms, since as per the NAALC; the role of the NAO is not that judging or modifying the legislation of the other Parties. The purpose of the report of

review of the Mexican NAO, in keeping with the NAALC, is that of bringing to the attention of the American labor authorities the subjects in what respects to the alleged non-compliance of the labor legislation put forward by the submission.

To the sole purpose of complying with that stated in Section 5.8 of the NAALC, the Mexican NAO looked for information on the subjects which could be pending resolution, and left out of this report any *sub judice* matter.

As follows, the main accusations made by the petitioners on the alleged omissions of the American government as regards the labor principles of the NAALC are observed: As regards principle 1 of the NAALC, dealing with the freedom of association and protection of the right to organize, the petitioners indicate that the labor policy of North Carolina prohibits the workers to reach agreement in a collective manner and even if it is not illegal to integrate a union, as collective bargaining is prohibited, the main benefit to association is denied by the state. In contrast, it is referred that the federal employees do enjoy the freedom of association right without any restriction whatsoever.

The American NOA indicated that the employees at all government levels have the right to form and join a union, in keeping with the First Amendment of the United States Constitution which guarantees, "... *the right of people to gather for peaceful purposes.*" Similarly, it added that the legislation of North Carolina is clear when it states that, "*every state employee reserves all those citizen rights and obligations provided by the United States Constitution and laws,*" and that even if the people of North Carolina through their representatives have decided that the state and municipal government cannot negotiate labor collective agreements, the public employees of North Carolina and their unions have a right to freedom of association and the right to participate collectively in state, municipal and federal democratic processes.

Despite that abovementioned, the Committee on Freedom of Association of the ILO issued recommendations in March 2007 on a complaint raised by the *United Electrical Radio and Machine Workers of America* in 2005, where it is underlined that the right to freely negotiate work conditions with the employers constitutes an essential element of union freedom; and that the unions should have the right, through collective bargaining to improve the labor condition of those they represent, without the intervention of the authorities. It also requested that the American government fostered a legal framework which shall enable collective bargaining of the public employees of North Carolina and that the NCGS 95-98 statute were repealed. In this regards, the United States informed the ILO about the presentation of different initiatives before the General Assembly of North Carolina for the 2007-2010 sessions, which intended to repeal the NCGS 95-98 statute. On follow-up reports issued by the ILO in November 2008, March 2010 and November 2011, the Committee noted the presentation of the above-mentioned initiatives, but indicated that no legislation had been approved, and urged the United States to continue with the efforts to establish a legal framework for collective negotiation in North Carolina. 3

As per labor principle 2 of the NAALC, as regards collective bargaining, the petitioners point out that the American government does not protect the labor collective rights of state and municipal workers in any federal labor law or the National Constitution, and that it leaves to the states the regulation of collective contracts. Nevertheless, the Assembly of North Carolina has not passed any legislation which guarantees the collective rights of public workers, and the federal courts have refrained from hearing the demands where these workers state that the NCGS 95-98 statute violates the United States Constitution. They also state that the federal government workers have this basic right guaranteed through the Statute on Federal Service as regards the relations between the Workers and the Administration.

The petitioners report, that even if there are mechanisms to establish their rights in case of violations, these are costly and many times inefficient, and they do not substitute the collective bargaining process as a preventive protection measure of the minimum labor conditions. They consider that without the right to collective bargaining, diverse International rulings are violated.

The petitioners indicate that the case was submitted twice before the ILO, and that this concluded that North Carolina should repeal the NCGS 95-98 Statute, and establish a legal framework for collective bargaining which shall integrate the collective rights to its legislation and that it should focus on the jurisdictions where the public officers are deprived, totally or partially, from said rights, which as aforementioned stated should be exercised in consultation with the public area unions.

The United States NAO confirmed that within the federal scope the United States Code grants and guarantees the right to collective bargaining that federal public employees have. Nevertheless, for public workers in North Carolina, the NCGS 95-98 statute is the law that applies, since the public sector is divided into three areas: federal, state and municipal, in keeping with the Constitution, which grants the federal government only certain capacities and the rest of the attributions are reserved to the states.²

The main law for collective bargaining in the country, the *National Labor Relations Act*, specifically excludes from its application state and municipal public employees, as per the federalism principles. Therefore, the federal government lacks the capacities to interfere with the authorities of the states to negotiate its own labor collective agreements and they have not achieved the majority in the General Assembly of North Carolina to modify the NCGS 95-98 Statute. Despite that aforementioned, the United States government indicated that it promotes collective bargaining practices at federal and state levels, respecting the autonomy of the states to develop laws and policies in the labor subject for its own workers, such as the promotion of collective bargaining practices through the *Federal Mediation and Conciliation Service*.

The United States NAO argued the existence of the corresponding legal precedents since there is no provision in the Constitution which forces to enter collective bargaining, and that North Carolina is free to decide, so the effectiveness of the NCGS 95-98 Statute remains. Other provisions have pointed out that the prohibition to collective hiring does not imply a prohibition for the workers to get involved in collective activities with unions to discuss their work matters, through the state legal process and they provided examples of these activities of the workers with the unions.

Additionally, in relation with the two complaints submitted before the Committee on Freedom of Association of the ILO, recommendations were issued in March 2007, where the Committee indicated that the right to freely negotiate work conditions with the employers constitutes an essential element of union freedom and that the unions should have the right, through collective bargaining to improve the work conditions of those they represent, without the intervention of the authorities. It also requested that the American government fostered a legal framework which shall enable collective bargaining of public employees in North Carolina and that the NCGS 95-98 statute shall be repealed. In this regards, the United States informed the ILO of the presentation of different initiatives before the General Assembly of North Carolina during the 2007-2010 sessions, which intended to repeal the NCGS 95-98 statute. On follow-up reports issued by the ILO in November 2008, March 2010 and November 2011, the Committee noted the presentation of the above-mentioned initiatives, but no legislation had been approved, and it urged the United States to continue with the efforts to establish a legal framework for collective negotiation in North Carolina.

At present, the ILO is reviewing another case, the 2741 one, which deals with the prohibition of state public workers to collectively negotiate, submitted on November 10, 2009 by the Transportation Workers Union of America and the Union of Transportation Workers of the New York City Metropolitan Area, AFL-CIO, Local 100 (Local 100).

As regards labor principle 6 of the NAALC, which deals with the matter of minimum work conditions, the petitioners point out that, since the NCGS 95-98 statutes prohibits a worker of the public sector to negotiate collectively, the state and municipal workers cannot obtain a decent wage and fair working hours. The petitioners exemplified situations in which the workers of the public sector of North Carolina face excessive and unsafe working hours, without the corresponding payment; and receive insufficient salaries and provisions. They argue they are forced to work long hours without rest and to work up to three weekends a month.

The petitioners argue that they have no right to access of the due process, since some workers in state hospitals can only submit complaints before the North Carolina Department of Health and Human Services on some specific subjects, and that the minimum conditions to work are not in place.

As regards the labor legislation applied to this principle, the United States NAO indicated that there is a federal legislation which regulates the payment of salaries and prohibits inequitable or below-the-standard payment as stated by the *Equal Pay Act*. Besides that, Title 29 of the *US Code*, Chapter 8, § 201-§ 219, refers to fair labor standards (*Fair Labor Standards Act*) and states the minimum salary and the payment for long hours.

The North Carolina Statute, NCGS § 95-25, requires that state and municipal public employers in said state place visible notices at work centers with information on the corresponding legislation dealing with the federal minimum salary and the payment of long hours, as well as information in what respects to the resources they have at the workers disposition. The procedures that the workers can start against the violations to the *Equal Pay Act* shall be presented before the state *Equal Opportunity Commission* and the *Wage and Hour Division* when dealing with violations to the *Fair Labor Standards Act*. The petitioners did not mention they have started these procedures.

As regards labor principle 7 of the NAALC, elimination of employment discrimination, the petitioners pointed out that there is racial and sexual discrimination in the public sector in North Carolina, due to the inequality existing as regards hiring, promotion, firing and salaries of the racial minorities and women. Similarly, they indicate that there is favoritism as regards best-paid work positions which are taken by white workers; while the positions with a lower salary are left to Afro-American workers, they argue that the complaints which have been submitted in the matter of discrimination are not resolved in a satisfactory manner.

According to that informed by the United States NOA, the *Equal Protection Clause*, the Nineteenth amendment to the Constitution, prohibits that the government at all levels provide a differentiated treatment to people, based on race or sex, so no distinction is legally justified.

Similarly, the *Civil Rights Act* contemplates equality of treatment to all people and prohibits discrimination and Title 42 of the *US Code* and the *Workforce Investment Act* prohibits labor discrimination. The *Employment Litigation Section*, of the *Civil Rights Division* of the Department of Justice of the United States, applies the dispositions of the *Workforce Investment Act*, which prohibits state and municipal government employers to discriminate at employment.

Additionally, the United States NAO indicates that the Constitution of North Carolina, in its section 1, § 19, states that no person can be denied equality of protection which law offers, nor will this person be subject to discrimination by the state for reasons of race, color, religion or nationality. Similarly, the statutes of this state contemplate provisions to prohibit discrimination, for example, that all the state departments and agencies should provide equality of opportunities to employment and compensation, as well as prohibit that said authorities take retaliation measures against a worker for raising a complaint based on a discrimination issue. The United States NAO explained that the workers count with federal and state procedures in place against discrimination.

As regards labor principle 8 of the NAALC, dealing with the matter of a similar salary to men and women, the petitioners did not provide specific information, despite the fact they mentioned this as one of the alleged violated principles. Nevertheless, they argued that the prohibition to negotiate collectively limits the rights of the public workers to get fair work conditions.

The United States NAO indicated that, as regards the payment to workers, the federal legislation requires that the employers pay similar salaries to men and women who develop a same job, which requires a similar capacity, effort and responsibility and which is performed in similar work conditions.

As for labor principles 9 and 10 of the NAALC, prevention of occupational lesions and disease and compensation in said cases, the petitioners share the experience of the workers of mental health hospital centers of the state government of North Carolina whose health and safety conditions are poor and they allege that this makes evident the need to count with an organization which shall represent them in order to improve said conditions. They argue that the workers work long hours and without a rest in environments with hostile and aggressive patients who have caused lesions too them. They also refer being exposed to toxic substances without the appropriate protection and of irregularities in the inspections practiced.

Besides that, they state that the workers do not have access to appropriate processes to make their complaints as regards the violations to health and safety matters at the work place, that access to these processes is very limited and that the resolutions of the complaints raised have been mostly settled against the worker. They consider that the workers do not receive the necessary information to request compensations when they suffer an accident or get ill, in keeping with the *North Carolina Workers' Compensation Act* and the *Family and Medical Leave Act*.

The United States NAO provided information in relation with the fact that its government through the *Occupational Safety and Health Act* ensures to every worker health and safety labor work conditions and urges the states to develop plans which shall ensure safe work places, which shall be approved by the United States Department of Labor. In the case of North Carolina, its plan to implement health and safety standards was approved. It also mentioned that the NCGS 95-143 statute states that state and municipal public employers in North Carolina shall place public notices at the work place which describe the occupational health and safety laws and the defense and actions which shall be executed towards their enforcement before the Department of Labor of North Carolina. Employers are also obliged to keep records and reports on the causes of occupational disease and accidents.

As far as the legislation on compensation for occupational lesions and disease is concerned, the United States NAO did not provide an answer to the specific questions of the Mexican NAO, contained on the consultations for cooperation.

Recommendations

1. In view of the arguments submitted by the petitioners and the United States government through the NAO, and based on the Regulations of the Mexican National Administration Office (NAO) on the submissions to which section 16 (3) of the North American Agreement on Labor Cooperation (NAALC) makes reference to, this report of review is brought to the attention of the United States Department of Labor (DOL) so that, in keeping with its internal procedures, the DOL determines the action to take, in keeping with the legislation and internal practices, to attend the arguments of the petitioners in what regards to whether the rights of the public employees of North Carolina have been violated for not guaranteeing their full exercise; not counting with the governmental measures for the effective application of the labor legislation; not having appropriate access to the procedures for the application of the legislation, or the corresponding process guarantees; as well as not knowing the laws, regulations and procedures that the workers might have to state their rights, as regards:

- Freedom of association and protection of the right to organize;
- The right to collective bargaining;
- Minimum work conditions;
- Elimination of discrimination at employment;
- Equal salary for men and women;
- Prevention of occupational lesions and disease; and
- Compensation in case of occupational lesions or disease.

2. The Mexican NOA places particular emphasis on the right to association and the collective bargaining right. As mentioned by the petitioners, even if, there is freedom of

association for the public workers of North Carolina, the prohibition to bargain collectively limits the exercise of said freedom. In this regards, there are recommendations and follow-up reports of the Committee on Freedom of Association of the International Labor Organization in the sense that North Carolina shall repeal the NCGS 95-98 statute and enable public workers of said state to negotiate collectively, as well as to proclaim a legal framework which shall foster this situation. Nevertheless, these reports recognize the efforts of the United States to proclaim legislation in the Legislative Assembly of North Carolina which contemplates collective bargaining of public workers.

On this particular, the Mexican NAO reiterates its respect for the NAALC and the general commitment established in section 2, which reads: the right of the Parties *"to establish, internally, their own labor regulations and to adopt or modify, in consequence, its labor laws and regulations,"* is recognized and it refrains from requesting or recommending to the United States government to repeal the NCGS 95-98 statute.

Despite that aforementioned, the Mexican NAO indicates its interest to learn the actions which the United States government carries out to promote the right of collective bargaining of the public workers of North Carolina, as well as it requests being updated on the initiatives submitted in past sessions of the Legislative Assembly and as regards the eventual submission of new initiatives of law on this subject in the Senate or in the same Legislative Assembly of North Carolina to repeal the NCGS 95-98 Statute.

3. As regards the subjects of minimum work conditions and the elimination of discrimination at employment, the United States NAO was informed of the resources in the legislation of the United States which enable the workers to state their rights faced with the alleged violations to them. Of the information provided by the petitioners it is not clear if the workers started said procedures.

In this regards, the Mexican NAO brings to the attention of the United States government the convenience of broadcasting in a more widely manner, through the mechanisms it might find fit, the minimum labor rights and conditions the public workers of said state should count with, as well as the legal resources at their reach.

4. As far as the health and safety issues which the petitioners mention is concerned, the Mexican NAO recommends that the subject be kept under review through cooperation consultations, in keeping with that stated in section 21 of the NAALC, since from the information that the United States government provided it is not clear what actions the government of said country has carried out, in special the North Carolina government, to guarantee the protection of health and safety of the public employees of that state.

In this regards, the NAO understands that the process to obtain information escapes the federal jurisdiction since it corresponds to the states and is not a simple one. Despite that aforementioned, the NAALC states the obligation of the parties to comply with their commitments, without considering it an obstacle the autonomy of the states.

¹ The labor principles of Appendix 1 of the NAALC are: 1) are: 1) freedom of association and protection of the right to organize; 2) right to collective bargaining ; 3) right to strike; 4) prohibition of forced labor; 5) restrictions to minors work; 6) minimum labor conditions; 7) elimination of discrimination at employment; 8) equal salary for men and women; 9) prevention of occupational lesions and disease; 10) compensation in cases of occupational lesions or disease; and 11) protection of migration workers.

2 Constitution of the United States, Amendment X (powers not delegated to the United States by the Constitution, not prohibited to the States, are reserved as it corresponds to the states or the people).